the two former conditions, but partly fails as to the third. Whether the fact that the attempt to organize was not under the law, but previous to it, should prove fatal must depend on the reasons underlying the requirement. The courts in adopting this test have done more than lay down a convenient and expedient rule of restriction; they have emphasized the necessity of a recognition of the state's will, and an honest and reasonable effort to comply with it. How nearly exact this compliance must be is a question of degree, but it would seem that it should at all events have direct reference to the enabling law. It is true that in the principal case there had been a *bona fide* and public attempt to organize, but that attempt had been of no avail prior to the passage of the statute, and its effect cannot well be carried over. There was no attempt to comply with the statute; no attempt that might have resulted in the formation of a corporation *de jure*. There was a *quasi* recognition of the state as the source of corporate power, but no recognition of its authority to prescribe the mode of incorporation. On the whole, therefore, assuming as the court does that there was no estoppel, the decisions would seem to be incorrect. The bank has even less claim to *de facto* corporate existence than have those associations whose honest but seriously defective attempts to organize in compliance with statutes have been held to fail. *McLennan* v. *Hopkins, supra.*

RIGHT TO WITHDRAW FROM PUBLIC SERVICE. — That individuals or corporations engaged in callings of a *quasi*-public nature are, so long as they remain in the business, *ipso facto* subject to special duties to the public, is settled beyond dispute. These obligations may, moreover, be extended by judicial decision, without the aid of statute, to callings never before so regulated. *Nash* v. *Page*, 80 Ky. 539; see 15 HARV. L. REV. 309. The question whether the courts may take a further step and hold that the obligation of a public service company, independent of any express provision by its franchise, includes the duty of continuing business so long as, in the opinion of the court, the public need requires it, is suggested by a late case in a circuit court of Indiana. *City of Indianapolis* v. *Indianapolis Gas Co.*, 35 Chicago Leg. News, 165. The defendant corporation had for many years supplied Indianapolis with natural gas, acting under a city franchise which gave it the special privilege of laying its mains in the streets, and contained no provision restraining the defendant from abandoning the business at any time. Notice was given by the defendant that on a certain date it would cease to supply gas and would give up its use of the streets. At suit of the city a temporary injunction issued to prevent such action pending final decision.

The view of the court seems based upon a supposed public right that a business which supplies a definite public need shall not be terminated at the caprice of individuals or corporations. In the case of public service companies not acting under franchise, the recognition of this right would mean that an obligation not to withdraw from business if such withdrawal would seriously inconvenience the public, is part of the duty incidental to public service as such. Such a doctrine, even if declared by statute, might well be held violative of the Fourteenth Amendment of the Federal Constitution, as an unwarrantable deprivation of business liberty. See *State* v. *Goodwill*, 33 W. Va 179, 181, 183. BRANNON, FOURTEENTH AMENDMENT, 109 *et seq.*

The case of a company acting under franchise presents somewhat greater difficulties, particularly if special privileges, such as the right of eminent domain or the right to occupy the streets of a city, are conferred. It has been argued that such a contract of enfranchisement contains a term, implied from the nature of the case and assented to on the part of the company by acceptance of the franchise, that service shall continue so long as the public may require it. Some *dicta* in the cases seem to support such a position. See *People* v. *Albany, etc., R. R. Co.*, 24 N. Y. 261, 269; *State* v. *Sioux City, etc., R. R. Co.*, 7 Neb. 357, 374. Moreover the few cases which have been found actually deciding that a public service company may withdraw, are not necessarily inconsistent with this view. In all of them it appeared that continuance in business would involve actual financial loss. *Commonwealth* v. *Fitchburg R. R. Co.*, 12 Gray (Mass.) 180; *State* v. *Dodge City, etc., Ry. Co.*, 53 Kan. 329. The decisions might, therefore, be supported on the ground that the public policy which underlies the obligation to remain in service does not require the maintenance of a losing business. In spite of these cases, however, it seems to have been generally supposed that public service companies of either class may withdraw from business at will. See *Savannah, etc., Co.* v. *Shuman*, 91 Ga. 400, 402. It might well be required, in the case of an enfranchised company at least, that reasonab e notice of withdrawal be given in order that provision might be made for the changed conditions. But if it be desirable that the acceptance of certain privileges should carry with it a correlative duty to render service indefinitely, it would seem that the doctrine should be established by statute rather than by so free a judicial interpretation of the franchise as that adopted in the principal case.

RIGHT OF SET-OFF AS APPLIED TO STOCKHOLDERS' LIABILITY. — Whether or no a stockholder who has been sued upon his statutory liability for the debts of a corporation may plead in discharge a claim of his own against the corporation is, in the absence of express statutory provision, an unsettled question. When the right to enforce such liability is vested in the receiver of the corporation or in the creditors as a body, it is almost universally held that the stockholder must pay in full and prove his claim with the other creditors. *Matter of Empire City Bank*, 18 N. Y. 199; see COOKE, CORP., § 225. If, on the other hand, the statute allows the individual creditor to sue, the stockholder may, by the weight of authority, set off the amount due him from the corporation. *Garrison* v. *Howe*, 17 N. Y. 458; *contra, Lauraglenn Mills* v. *Ruff*, 57 S. C. 53; see TAYLOR, CORP., 5th ed., § 732. Two cases in Maryland, decided within a year, adopt the latter rule and allow the stockholder a set-off in an action by a creditor. *Cahill* v. *Association*, 94 Md. 353; *Strauss* v. *Denny*, 53 Atl. Rep. 571.

The rule of the first class of cases where the action is for the benefit of all the creditors seems clearly just. A contrary result, allowing a set-off, would give the stockholder a preference, whenever the property of the corporation together with the sum for which the stockholders are liable proves insufficient to satisfy the creditors. It is true that in bankruptcy a creditor is allowed at common law to set off a debt due the bankrupt. *Ex parte Wagstaff*, 13 Ves. 65. The bankruptcy rule is distinguishable, however, on